

Appl. No. : 10/808,174
Filed : March 23, 2004

REMARKS

In response to the Office Action mailed November 16, 2007, Applicant has amended the application as above. No new matter is added by the amendments as discussed below. Applicant respectfully requests reconsideration of the application in view of the remarks set forth below and a 37 CFR § 1.131 declaration attached hereto.

Discussion of Claim Amendment

Claim 23 has been amended. Upon the entry of the amendments, Claims 1-27 are pending in this application. The amendment to Claim 23 is merely for clarification and does not narrow the scope of protection. Thus, the claim amendment does not introduce any new matter. Entry of the amendment is respectfully requested.

Discussion of Claim Objection

The Examiner objected to Claim 23 because of certain informalities. In reply, Claim 23 has been amended to resolve the issue addressed by the Examiner. Withdrawal of the objection is respectfully requested.

Discussion of Rejection of Claims under 35 U.S.C. §§ 102(e) and 103(a)

Claims 1, 11-13, 18, 23 and 26 were rejected under 35 U.S.C. § 102(e) as being anticipated by Ginzburg (U.S. Application Publication No. 2004/0264394). Claims 2-10, 14-17, 19-22, 24-25 and 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ginzburg in view of Kostic et al. (U.S. Application Publication No. 2003/0134642).

Ginzburg Is In Fact Not Prior Art

Applicant respectfully submits that Ginzburg is in fact not prior art under 35 U.S.C. §§ 102 (e) and 103(a) with respect to pending Claims 1-27. As described in the attached 37 CFR § 1.131 declaration, the claimed invention was invented prior to June 30, 2003, which is the filing date of Ginzburg. Furthermore, Applicant diligently worked to reduce to practice the invention from at least before June 30, 2003, through at least March 23, 2004, on which date the present application was filed and thus there was a constructive reduction to practice. In order to

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further support the diligence, Applicant submits herewith three supporting declarations by attorney, agent and in-house agent, respectively. In view of the above, withdrawal of the § 102 rejections is respectfully requested.

Kostic Does Not Teach All Features Of The Claimed Invention

Applicant respectfully submits that Kostic does not teach all features of the claimed invention. Independent Claim 1 recites, among other things, transferring, at the access node, a load from the overloaded channel *to a less loaded channel of the plurality of channels* (via which the access node communicates with a plurality of terminals). Each of the remaining independent claims includes a substantially similar feature thereto. Kostic does not teach the above-indicated feature.

Kostic is directed to load-balancing between access points where a channel in a highly loaded access point is transferred to a channel in another less loaded access point. *See paragraphs [0016] and [0032].* In contrast, in the claimed invention, an overloaded channel or link in an access point (node) is transferred to a less loaded channel in the same access point (node). In view of the above, withdrawal of the § 103 rejections is respectfully requested.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

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CONCLUSION

In view of Applicant's foregoing amendments and remarks, and the attached 37 CFR § 1.131 declaration and three supporting declarations, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns which might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 5/1/08

By: _____

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